

Claimant's knee problems did not resolve, and he underwent two separate surgeries on the knee in order to repair the problems. Claimant continued treatment with several

doctors, including James Joseph, Jr., M. D., and Jay Stanley Jones, M.D., both orthopedic surgeons.

After a series of treatments to the knee, it was discovered that claimant was suffering from avascular necrosis of both hips with the left being worse than the right. The doctors considered this to be a degenerative condition.

Claimant alleges accidental injury beginning January 16, 1998, and continuing to the present. Claimant also alleges his avascular necrosis of the hip was aggravated by riding on a Cushman scooter that claimant used in his employment and by the excessive walking claimant was required to do on his job. Claimant's testimony and that of Troy K. Combs, his supervisor, indicates that claimant stopped using the Cushman scooter in 1997. In addition, because of claimant's knee problems, he was working with walking restrictions of fifty yards at a single walk and five hundred yards per shift.

Both, Dr. Jones and Dr. Joseph opined that claimant's hip condition was aggravated by driving the Cushman scooter. However, the testimony is uncontradicted that claimant was not driving the scooter during the period of time in question. Therefore, it would be impossible for claimant's hip condition to have been aggravated by driving the scooter during the dates alleged.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark, dated October 29, 1998, should be affirmed and claimant is denied benefits, having failed to prove accidental injury arising out of and in the course of his employment to his left hip during the dates alleged.

IT IS SO ORDERED.

Dated this ____ day of December, 1998.

BOARD MEMBER

c: Brian D. Pistotnik, Wichita, KS
Eric K. Kuhn, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director